IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9930 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILAVAR YUSUFBHAI FULANI

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 9930 of 2001

MR AR SHAIKH for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 10.8.2001 passed by the Commissioner of Police, Rajkot in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said

order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four registered offence against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses recorded on 7.8.2001, which have been verified on 8.8.2001 and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal activities detrimental to public health and public order and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner submitted that a representation was made on behalf of the detenu on 11.10.2001, which was rejected on 19.10.2001, but was communicated to the detenu on 27.10.2001. He submitted that there is delay in communication which has affected the right of the detenu. He relied upon the decision in the case of Harish Pahwa Vs. State of U.P., reported in AIR 1981 SC 1126.

4. The petition is opposed to by learned AGP Mr. S.S.Patel. He places on record an affidavit of the detaining authority. Learned AGP after consulting the file, states that the representation was received by the detaining authority on 15.10.2001, which was forwarded on 17.10.2001 to the Government and Government received the same on 19.10.2001 and decided on the very same day and it was communicated by communication dated 22.10.2001. On examining the communication placed on record, he concedes that it was in fact communicated to the detenu on 27.10.2001.

5. Having regard to the rival side contentions, the continued detention of the detenu would be affected only on account of delay in communicating the decision on the representation in light of the decision of the apex Court in the case of Harish Pahwa Vs State of U.P. (supra). In that case the order was quashed when there was delay of only 2 days. In the instant case, there is a delay of about 7 days and therefore, the delay in communication has resulted into infringement of the right of the detenu

of making an effective representation. The order of detention therefore deserves to be quashed.

6. The petition is therefore, allowed. Order of detention dated 10th August, 2001 passed by the Commissioner of Police, Rajkot City is quashed and set aside. Detenu Dilavar Yusufbhai Fulani be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas